

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN AVILA GUTIERREZ,  
Petitioner,  
v.  
WARDEN FCI HERLONG,  
Respondent.

No. 2:23-cv-00646 AC P

ORDER AND FINDINGS &  
RECOMMENDATIONS

By order filed May 24, 2023, the petition was screened and found to not state a claim for relief. ECF No. 6. Petitioner was given thirty days to file an amended petition and cautioned that failure to do so would result in a recommendation that this action be dismissed. Id. at 3. After petitioner failed to file an amended petition, he was given an additional twenty-one days to amend the petition and warned that failure to do so would result in a recommendation that this action be dismissed without further warning. ECF No. 7. Twenty-one days have now passed, and petitioner has not filed an amended petition or otherwise responded to the court's order.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly assign a United States District Judge to this action.

IT IS FURTHER RECOMMENDED that the petition be dismissed for failure to state a claim for the reasons set forth in the May 24, 2023 Screening Order (ECF No. 6). See L.R. 110; Fed. R. Civ. P. 41(b); Rules 1 & 4, 28 U.S.C. foll. § 2254.

1 These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
3 after being served with these findings and recommendations, petitioner may file written  
4 objections with the court. Such a document should be captioned “Objections to Magistrate  
5 Judge’s Findings and Recommendations.” Petitioner is advised that failure to file objections  
6 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
7 Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 || DATED: September 11, 2023.

Almon Crane

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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE